

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Lyle Thomas Lemke,

Complainant,

vs.

NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING

Rochester Area Builders, Inc.,

Respondent.

TO: Parties

On October 1, 2004 a complaint was filed with the Office of Administrative Hearings alleging a violation of Minn. Stat. § 211B.15. An Administrative Law Judge found by Order dated October 11, 2004 that there is probable cause to believe that Respondent violated the statute.

THEREFORE, NOTICE IS HEREBY GIVEN that this matter has been assigned to a panel of two Administrative Law Judges and a Compensation Judge for an evidentiary hearing. The assigned Judges are: Kathleen Sheehy, Presiding Judge; Barbara Neilson; and Cheryl LeClair-Sommer. The address of the Judges is 100 Washington Square, Suite 1700, 100 Washington Avenue South, Minneapolis, MN 55401-2138. The Judges may be reached at telephone number 612-341-7600 and the Office's fax number is 612-349-2665.

IT IS FURTHER ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for an evidentiary hearing to be held on **October 18, 2004 at 1 p.m. at the Office of Administrative Hearings**. The parties shall exchange copies of all exhibits they intend to offer at the hearing by Friday, October 15, 2004. The parties shall provide three copies of their witness and exhibit lists to Presiding Judge Kathleen Sheehy by October 15, 2004.

The hearing has been ordered pursuant to the authority granted to the Chief Administrative Law Judge by Minn. Stat. § 211B.35, subd. 1. The hearing will be conducted pursuant to Minn. Stat. §§ 211B.35 and 211B.36. Information about the evidentiary hearing and copies of state statutes and rules may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us. The Office of Administrative Hearings conducts proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court.

HEARING PROCEDURES

At the evidentiary hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judges. The panel may consider any evidence and argument submitted until a hearing record is closed, or may continue a hearing to enable the parties to submit additional testimony. All hearings must be open to the public.

WITHDRAWAL OF COMPLAINT

At any time before an evidentiary hearing begins, a complainant may withdraw a complaint. After the evidentiary hearing begins, however, a complaint filed may only be withdrawn with the permission of the panel.

COSTS

If the panel determines the complaint is frivolous, it may order the complainant to pay the respondent's reasonable attorney fees and to pay the costs of the Office in the proceeding in which the complaint was dismissed.

BURDEN OF PROOF

The burden of proving the allegations in the complaint is on the complainant. The standard of proof of a violation of section 211B.06, relating to false statements in paid political advertising or campaign material, is clear and convincing evidence. The standard of proof of any other violation of chapter 211A or 211B is a preponderance of the evidence.

DISPOSITION OF COMPLAINT

At the conclusion of the evidentiary hearing, the panel must determine whether the violation alleged in the complaint occurred and must make at least one of the following dispositions:

- (1) The panel may dismiss the complaint.
- (2) The panel may issue a reprimand.
- (3) The panel may find that a statement made in a paid advertisement or campaign material violated section 211B.06.
- (4) The panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.
- (5) The panel may refer the complaint to the appropriate county attorney.

The panel must dispose of the complaint within three days after the hearing record closes, if an expedited probable cause hearing was required by section 211B.33; or within 14 days after the hearing record closes, if an expedited probable cause hearing was not required by section 211B.33.

JUDICIAL REVIEW

A party aggrieved by a final decision on a complaint filed under section 211B.32 is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

REASONABLE ACCOMMODATION

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Office of Administrative Hearings must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612-341-7610 (voice) or 612-341-7346 (TTY).

Dated: October 12, 2004

/s/ Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge